Before the
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	)	
	)	
Usage of the Public Switched	)	CC Docket No. 96-263
Network by Information Service	)	
and Internet Access Provider	)	

REPLY COMMENTS OF AMERICA ONLINE, INC.

George Vradenburg, III
Senior Vice President and General Counsel
William W. Burrington
Director, Law and Public Policy
and Assistant General Counsel
Jill Lesser
Deputy Director, Law and Public Policy
and Senior Counsel
AMERICA ONLINE, INC.
1101 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036
(202) 530-7878

Donna N. Lampert
Christopher J. Harvie
Yaron Dori
MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY AND POPEO, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
(202) 434-7300

Counsel for America Online, Inc.

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America Online, Inc. ("AOL"), by its attorneys, and pursuant to Section 1.430 of the Commission's rules, hereby submits these reply comments in the Notice of Inquiry ("NOI") in the above-captioned docket regarding the Usage of the Public Switched Network by Information Service and Internet Access Providers.[1/]

INTRODUCTION AND SUMMARY

In its initial Comments, AOL explained that the emergence of the Internet services business has produced unprecedented public interest benefits that are likely to increase in the future. As Commerce Secretary William Daley stated recently, "Information networks – computing and telecommunications – have integrated the world, transforming what we produce, the way we produce it, the way we organize ourselves to produce, and the way our economies perform."[2/] Based upon its experience as the world's largest Internet services provider, AOL noted that the emergence of true competitive alternatives, rather than any particular regulatory requirements, will best create incentives for the deployment of the ubiquitous, efficient,

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1/ Usage of the Public Switched Network by Information Service and Internet Access Providers, Notice of Inquiry, CC Docket No. 96-263, FCC No. 96-488, __ FCC Rcd __ (rel. Dec. 24, 1996) ("Notice of Inquiry").

2/ Remarks of U.S. Secretary of Commerce, William M. Daley, at the Networked Economy Conference, March 18, 1997 (available through the Public Affairs Department of the Secretary's Office).

economic and reliable advanced, data-capable networks necessary for the future.[3/] Significantly, the extensive comments filed by all parties highlight the soundness of this position.

Several incumbent local exchange carriers ("ILECs"), however, have used this proceeding to re-argue their position in favor of applying the FCC's interexchange carrier access charges to Internet Service Providers ("ISPs"). Neither of the two primary arguments proffered in support of the ILECs' proposal has merit. First, they claim that imposing access charges on ISPs is necessary to provide the ILECs with adequate incentives to invest in new, data-friendly network architectures.[4/] The Commission should reject this request to impose additional charges on ISPs in order to fund ILEC investment in new data transmission technologies and functionalities. Commission policies should not be premised upon the ILECs' reluctance to place capital at risk absent guarantees of cost recovery. Market forces, rather than more government-mandated fees, will most effectively promote new investment in data-friendly architectures. Thus, the Commission should focus on policies that reward risk-taking by manufacturers and network providers and promote robust, facilities-based local service competition.

Nor is there any merit to the ILECs' claim that access charges are also necessary in order to ensure full compensation for use of their network services by ISPs. The record in both this proceeding, and in the companion Notice of Proposed Rulemaking,[5/] is completely devoid of any genuine evidence that the ILECs are not being compensated fully for Internet and information

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3/ See Comments of AOL at 5-6.

4/ See, e.g., Comments of Pacific Telesis at 6 (Imposing access charges on ISPs "is the simplest and most direct solution for . . . creating the incentive for investments in, and use of, data access networks").

5/ In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, Usage of the Public Switched Network by Information Service and Internet Access Providers, Notice of Proposed Rulemaking and Third Report and Order, CC Docket Nos. 96-262, 94-1, 91-213, FCC No. 96-488 (rel. Dec. 24, 1996) ("Notice of Proposed Rulemaking").

service costs.[6/] Moreover, AOL remains willing to pay for network services it uses in accordance with principles of cost causation and economically efficient pricing. Thus, notwithstanding ILEC claims to the contrary, there is no "problem" of uncompensated use that necessitates the Draconian and archaic "solution" of extending access charges to ISPs.

The Commission should continue its efforts to encourage new entry into local telephony and refrain from adopting rules or policies that will hamper the development of competition. Accordingly, the Commission should reject arguments that it should alter the emerging reliance by ISPs upon competitive local exchange carriers ("CLECs"). As delineated in AOL's comments, the Commission's local competition rules and policies are beginning to provide ISPs with competitive local service alternatives. The fact that ILECs may be losing traffic and revenue is not a "problem" that needs to be remedied, but rather proof positive that the FCC is on the right track. Similarly, the FCC should stay the course with respect to its position on the regulation of enhanced and emerging services and refrain from expanding its rules.

I. THE COMMISSION SHOULD CONCLUDE THAT ROBUST COMPETITION WILL BEST STIMULATE ADVANCED DATA-CAPABLE NETWORKS AND EXPAND USE OF THE INTERNET

A. Facilities-Based Local Competition, Rather than Expansion of the Outdated Access Charge Regime, Constitutes the Most Effective Means of Encouraging New Investment in the Internet Services Market

The comments filed in this proceeding support the basic premise, well accepted by both the Congress in enacting the Telecommunications Act of 1996[7/] and the FCC in developing its

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6/ See Comments of AOL in CC Docket 96-262 at 12-15 (Jan. 29, 1997); Reply Comments of AOL in CC Docket 96-262 at 7-10 (Feb. 13, 1997); Comments of the Internet Access Coalition in CC Docket 96-262 at 13-17 (Jan. 29, 1997); see also Economics and Technology, Inc., "The Effect of Internet Use on the Nation's Telephone Network," Jan. 22, 1997 ("ETI Study") at 19-20 (filed as an attachment to the Comments of the Internet Access Coalition in CC Docket 96-262) (Jan. 29, 1997).

7/ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 et seq. ("1996 Act").

policy framework, that competition, not regulation, should drive efficient network investment and infrastructure deployment decisions.[8/] The Commission can most effectively promote the accelerated deployment of data-capable networks by ensuring that neither artificial regulatory barriers nor ILEC market power in local telephony distort or constrain investment decisions in the Internet services business.[9/] The Commission's overriding policy should be to rely on market forces and competitive risk-taking to stimulate investment in data-friendly network architectures. This policy should govern the Commission's treatment of all competitors in the Internet services business, including the local telephone companies.

To this end, the FCC should reject ILEC calls for the mandatory imposition of the outdated access charge regime on ISPs, which are little more than an effort to enlist the Commission into providing a single category of competitors with upfront capital to fund new investment in data transmission technologies.[10/] The ILECs' proposal contravenes the Congressional and Commission policies favoring competition, and is inimical to the risk-taking sensibility that has spurred the growth of the Internet services market.[11/] Moreover, expanding the archaic access charge regime is not a reliable mechanism for increasing network investment in data-friendly architectures, since there is no guarantee that the ILECs would use this new

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8/ See, e.g., Comments of WorldCom at 18-22; Comments of Commercial Internet Exchange Association at 12-15; Comments of GSA/DOD at 3-4.

9/ Comments of AOL at 6-15.

10/ See Comments of MCI at 3 ("Where competitive companies see the increased demand for enhanced services as a meaningful revenue opportunity worthy of new investment, the RBOCs want the money up-front and will decide later whether to make the investments or not"); Comments of Association of Online Professionals at 5-7; Comments of Internet User Coalition at 11; Comments of Internet Consumer Parties at 6.

11/ Compare Comments of Pacific Telesis at 33 ("'Building It' Is Not Enough") with Comments of Internet User Coalition at 12 ("Build It, And We Will Pay").

revenue stream to fund new investment.[12/] Indeed, as noted by many parties, such an approach would likely send precisely the wrong signal by dampening new investment by non-ILEC competitors in the Internet services market while encouraging the ILECs to continue to rely on the circuit-switched network as the principal means of transmitting data traffic.[13/]

Rather than adhere to the risk-averse ILEC monopoly model of generating front-end investment capital through the imposition of mandatory regulatory fees, the Commission should instead rely on market forces to spur investment in data-friendly networks. Accordingly, the Commission should vigorously encourage facilities-based competitive alternatives to the ILECs local telephone operations.[14/] Not only are new providers of network services for ISPs likely to utilize the most advanced and efficient network technologies and functionalities presently available, but their entry also will force the ILECs to upgrade the capabilities of their networks in order to remain competitive.[15/] Likewise, the proliferation of multiple broadband pathways into the home will encourage investment and innovation by manufacturers, by expanding the range of potential network provider, business and residential purchasers of new technologies and functionalities.

12/ See, e.g., Comments of GSA/DOD at 9-10; Comments of TCG at 6-7; Comments of MCI at 3; Comments of Internet User Coalition at 13 (stating that "there is no guarantee that revenues generated from data transmission will ever be devoted to development of networks, or anything besides ILEC general funds").

13/ See, e.g., Comments of Internet Consumer Parties at 14-15 (stating "if the LECs are well compensated, or subsidized in some other way, from the ISP use of the network, there would be little incentive for the LECs to invest in new, more efficient technology that would bypass the LEC network, thereby relieving any potential congestion"); Comments of CompuServe/Prodigy at 8; Comments of Internet User Coalition at 11.

14/ Comments of CompuServe/Prodigy at 8-9; Comments of Internet User Coalition at 8.

15/ Indeed, even the ILECs recognize the need for reliable network alternatives for ISPs and their customers to the circuit-switched network of today. For instance, BellSouth mentions a network access server solution to high speed data service needs, referring to "an alternative to the public switched network for the purposes of gaining access" to individual ISP users. Comments of BellSouth at 4. Similarly, Pacific Telesis acknowledges the benefits of moving "Internet traffic from the voice network to a much more efficient data network." Comments of Pacific Telesis at 36.

By expanding the aggregate capacity available for use by ISPs and their customers, facilities-based competition also will address the concerns regarding network congestion raised by some ILECs as further justification for the imposition of access charges on ISPs.[16/] The promotion of new entry into the local marketplace will most effectively resolve any network congestion concerns by expanding the overall capacity available to ISPs and spurring the ILECs into upgrading the existing capacity on their local networks.

Some commenters continue to confuse congestion and blockage in the public switched telephone network with congestion and blockage within an ISP's network or the Internet itself.[17/] As AOL and others explained previously, any congestion on the public switched network is wholly distinct from Internet congestion or blockages on an ISP's network due to insufficient numbers of modems or other network equipment and capacity issues.[18/] While ultimately disruptive to users of Internet online services, and therefore a cause for significant concern for all participants in the Internet community generally, and AOL in particular, these shortcomings have absolutely nothing to do with the voice-based ILEC-operated telephone network.

Significantly, relying on competition to spur new network investment in the Internet services market also would avoid the suppression of demand and discouragement of Internet use inherent in the ILECs' proposal to impose access charges on ISPs.[19/] Indeed, no ILEC addresses the fact that the impact of its proposal to inflict access charges on ISPs would fall

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16/ See, e.g., Comments of Commercial Internet Exchange Association at 2-3. Notably, most commenters agree that the ILECs have failed to offer any reliable evidence that ISP traffic has engendered congestion on the public switched network. Id. at 8; Comments of GSA/DOD at 12-15; Comments of Internet Consumer Parties at 9; Comments of Internet Use Coalition at 23-25.

17/ Comments of GTE at 25-27; Comments of USTA at 9-12.

18/ See, e.g., Comments of AOL, CC Docket No. 96-262 (Jan. 27, 1997) at 13; Kevin Werbach, "Digital Tornado: The Internet and Telecommunications Policy," OPP Working Paper No. 29, March 1997 ("Digital Tornado") at 52-54.

19/ See, e.g., Comments of GSA/DOD at 8-9; Comments of Internet User Coalition at 15.

disproportionately on residential users, since business customers often have dedicated access to ISPs or the Internet backbone itself.[20/] Nor do they mention that the imposition of access charges could provide the ILECs with a competitive advantage as they begin to enter the Internet online services market, since their ISP affiliates could simply absorb some or all of these new access fees -- which, for the ILEC, are simply internal transfer payments -- in order to increase market share through unfair cost advantages.[21/] Clearly, discouraging use of the Internet by residential consumers and reducing competition and diversity in the ISP market are antithetical to the policy goals articulated by the Commission and Congress.

B. Competition in the Internet Services Market, and Not Access Charges, Will Encourage ISPs to Use the Most Advanced and Efficient Network Technology to Provide Services

As AOL emphasized in its initial comments, the growth and development of the Internet itself, in which commercial competitors have flourished, can provide a model for the FCC to follow as it considers the development of improved data-friendly infrastructure.[22/] In fact, the comments in this proceeding underscore the highly competitive nature of today's Internet services market, with thousands of national, regional and local ISPs.[23/] It is precisely due to this vigorous competition that consumers benefit, as providers seek to gain a competitive edge in the marketplace with newer, better, more reliable, and more cost-effective services.

Despite this intense competition in the Internet services market, some commenters contend that unless ISPs are subjected to the interexchange carrier access charge framework,

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20/ See Comments of Internet User Coalition at 16; see also Comments of UTC at 3-4 (stating that applying access charges could prevent the development of new networks in rural areas and increase the cost of using the Internet).

21/ See, e.g., Comments of Internet Consumer Parties at 14-15; Comments of Internet User Coalition at 15.

22/ Comments of AOL at 11-12. AOL emphasized that for robust competition to take root, the FCC should be guided by principles of nondiscriminatory open access, connectivity and interoperability. Id.

there will be no incentive for ISPs to migrate their traffic off the circuit-switched network and onto faster and more efficient network architectures.[24/] These commenters claim that AOL and other ISPs presently lack the incentive to use more efficient data transmission networks because the exemption from access charges enables ISPs to pay artificially low rates for use of the circuit-switched network to transmit their data traffic.[25/] Incredibly, some ILECs even argue that ISPs are somehow using the capacity constraints of the ILECs' existing networks to "control and meter" calls in an attempt to use the ILEC's "busy signals to limit access by dialers."[26/] It is absurd to suggest that allowing customers to encounter busy signals will somehow improve AOL's competitive market position or provide a business advantage. AOL has publicly committed to increasing several-fold the number of available modems for AOL members precisely so they will not encounter busy signals.

Because of the intense competition among ISPs in the Internet services business, including from the ILECs themselves, AOL must furnish the fastest and highest quality network connections possible and offer timely and responsive customer service. The competitive pressures on ISPs obviate the need for the ILEC-prescribed "incentives" – which amount to nothing more than a surcharge on their competitors – to move traffic to more efficient data network architectures.[27/]

23/ See, e.g., Comments of the U.S. Internet Providers Association at 1.

24/ See, e.g., Joint Comments of Bell Atlantic and NYNEX at 12-13; Comments of America's Carriers Telecommunications Association ("ACTA") at 3-4.

25/ See, e.g., Comments of Pacific Telesis at 13-14, 16-17; Comments of the Alliance for Public Technology at 4.

26/ Comments of SNET at 7, 13.

27/ At least some ILECs do acknowledge the powerful incentives that ISPs have to offer efficient service and the potential negative market repercussions of the failure to do so. See Comments of US WEST at 2-7, 15-17.

As AOL stressed in its initial comments, Internet traffic is not routed on the public switched network because the ILECs' network is more reliable or even more cost effective. Internet traffic is on the existing telephone network because there are virtually no alternatives. Thus, the encouragement of robust, facilities-based competition remains the most effective incentive for spurring the deployment and utilization of advanced data transmission technologies. Indeed, while several ILECs persist in trumpeting their overlay data networks,[28/] as AOL explained, these are not genuine competitive alternatives.[29/] Rather, many of these so-called "solutions" continue to rely upon the same "last mile" subscriber loop as is used presently, but with the added disadvantage of subsuming the functions that are currently performed by many ISPs, including AOL, today.[30/] Accordingly, the Commission should promote local competition in order to ensure that the ILEC data overlay networks do not become a means to reduce the diversity and competitiveness of the ISP marketplace.

AOL continues to support the FCC in its efforts to assess ways in which it can encourage the development of data-friendly infrastructure. In this regard, the FCC should not be swayed by arguments that divert attention from this goal. Rather, the Commission should continue to focus on ways it can promote robust facilities-based competition in the long run and send a strong message to the ILECs that they must adapt to and plan for the increasingly competitive environment in which government regulators can no longer assure them a guaranteed return. Just

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28/ See, e.g., Comments of SNET at 20; Comments of Pacific Telesis at 36; Joint Comments of Bell Atlantic and NYNEX at 11-12.

29/ See Comments of AOL at 22-23.

30/ Moreover, "solutions" that involve the replacement of ISP modem pools with ILEC modem pools not only reduce the competitiveness and diversity of the market, they also diminish the ability of ISPs to control the quality of their service by ceding more transmission and delivery functions to their direct competitors, the ILECs, see Comments of AOL at 41-42.

as AOL and other ISPs have to adapt their business strategies to the competitive marketplace, with its genuine risks and rewards, so too must incumbent carriers.

II. THE COMMISSION SHOULD REFRAIN FROM ADOPTING REGULATORY POLICIES THAT WILL STIFLE INVESTMENT AND HAMPER THE GROWTH OF COMPETITION

A. Imposition of Non-Cost-Based Charges on ISPs Is Unjustified and Inconsistent With the Objectives of Promoting Internet Use and Encouraging Investment in Data-Friendly Network Architectures

Consistent with the bedrock principle of using competition, rather than regulation, to spur new investment, the Commission's policies should seek to ensure that ISPs pay for use of network services they utilize only in accordance with the core principles of cost causation and economically efficient pricing.[31/] Any other policy would constrain efficient investment by providing the ILECs with an unjustified, artificial subsidy for their role as managers of local monopoly telephone networks. AOL remains fully willing to pay for the ILEC network services it uses in accordance with forward-looking principles of cost causation. The prices for the ILEC services utilized by ISPs must, however, mimic the prices that would prevail in a competitive market, in order to ensure optimal investment decisions in the Internet services market.

As shown by AOL and others, the ILECs have failed to proffer any concrete empirical or economic evidence demonstrating that they are not now fully compensated for the costs that ISPs and their end user customers impose on the ILECs' networks.[32/] Indeed, the available evidence indicates that ILECs are being fully compensated for the network services used by ISPs.[33/] As WorldCom aptly noted, the ILECs have argued for years that local business rates are set

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31/ See, e.g., Comments of MCI at 4; Comments of WorldCom at 7-10; Comments of CompuServe/Prodigy at 12-13.

32/ See, e.g., Comments of Internet User Coalition at 22-34; ETI Study at 19-21; Comments of Internet Consumer Parties at 9-11.

33/ See ETI Study at 23-28.

artificially high to subsidize residential rates.[34/] They cannot now credibly claim that these lines have been priced below cost.[35/] Likewise, numerous commenters have noted that use of the local telephone networks by ISP customers has generated a tremendous growth in second line revenues for the ILECs, providing them with revenue streams from both ISP network providers and end users.[36/]

It is undisputed that today, however, access charges do not reflect economic costs. Even with expeditious Commission action, it is likely that the realignment of interexchange carrier charges will take years. Moreover, Part 69 access elements have been designed to offer interexchange carriers voice-based features and services and thus are not suitable for the data-based traffic of ISPs.[37/] Consequently, regardless of whether these charges are brought to economic levels, they should not be imposed upon ISPs under a misguided attempt somehow to have ISPs "pay their fair share." The imposition of such an ISP surcharge for use of ILEC networks is contrary to the Congressional and Commission objective of relying upon market forces to drive investment and innovation in the Internet services market.[38/]

Notably, even under the FCC's proposed changes to interexchange carrier access charges, there may be significant non-cost-based components. For example, the FCC has proposed to increase charges for second and additional lines for residential customers and for all lines for multi-line business customers, including above the per-line loop costs assigned to the interstate

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34/ Comments of WorldCom at 15.

35/ See, e.g., Comments of Pacific Telesis at 31-33; Joint Comments of Bell Atlantic and NYNEX at 7; Comments of USTA at 13-14.

36/ See, e.g., Comments of Internet User Coalition at 23; Comments of WorldCom at 21.

37/ See, e.g., Digital Tornado at 62; Comments of Teleport at 2-3.

38/ See 1996 Act at § 230(b)(2).

jurisdiction.[39/] As AOL has already noted, this discriminatory and uneconomic proposal should be rejected, as it improperly shifts costs to certain users.[40/] While the FCC can and should consider important public policy goals such as universal service, the 1996 Act expressly requires that such subsidies be explicit.[41/] Indeed, by its own terms, the FCC's access reform proceeding seeks to attain "economic efficiency."[42/] Thus, the Commission must refrain from adopting any policies that would force ISPs to pay non-cost-based rates for the ILEC network services they use.

Finally, the FCC should acknowledge that there are an array of differences among ISP network configurations and usage of various ILEC networks.[43/] Consequently, the one-size-fits-all approach of carrier access charges is not logically related to actual network use, even assuming that the groundless ILEC claims about uncompensated costs were true. In fact, even some ILECs concede that with respect to the parts of the network they argue are usage-sensitive, such as the interoffice trunks, if there are different peak usage characteristics for ISP data traffic than for voice traffic, then no additional trunks are required, and hence no additional costs are incurred.[44/] Significantly, while some ILECs complain loudly that they are incurring costs to

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39/ Notice of Proposed Rulemaking at ¶ 64.

40/ See Reply Comments of AOL in CC Docket 96-262 at 15 (Feb. 13, 1997). For the same reasons, AOL agrees with those parties that urge the FCC to reject the imposition of a SLC per derived channel for ISDN, as such an approach is inconsistent with cost causation. See Comments of Motorola at 10.

41/ 1996 Act at § 254(e).

42/ Notice of Proposed Rulemaking at ¶ 17.

43/ See Comments of US WEST at 20-22, 27-28, Exhibit B.

44/ See Comments of GTE at 16-17. Moreover, as some parties noted, maintaining and deploying adequate network facilities and capacity is precisely the function that ILECs are already compensated for in the rates they charge. See Comments of WorldCom at 20.

deploy additional trunks for ISPs, they make no such complaint when they deploy similar facilities for their own competitive operations.[45/]

B. The Commission Should Not Alter Regulatory Policies that Are Presently Working to Promote the Provision of Service to ISPs by CLECs

The comments clearly support the basic tenet that effective implementation and strengthening of the Commission's local competition policies will play a critical role in spurring new investment in data friendly technologies and expanding use of the Internet.[46/] Policies and rules that promote competition to increase the number of data transmission paths into residential premises will spur investment and innovation in data-friendly architectures and diminish the incentives and opportunities for anticompetitive behavior by incumbent carriers in the ISP market.

Many ILECs still refuse to accept that they must transition from the protected monopoly environment in which they previously operated to the new competitive telecommunications era of today. Instead, they have taken this Notice of Inquiry as another venue to condemn the FCC's local competition rules designed to encourage CLECs to offer competitive telecommunications services. For instance, some ILECs now seek to undermine the ability of CLECs to serve ISPs by attacking the mutual compensation scheme set forth by the FCC and many states and negotiated by many ILECs themselves in interconnection agreements.[47/]

45/ For example, SNET has deployed interoffice trunking facilities to transport the 80 channels of video programming of its statewide cable television affiliate. See SNET Tariff FCC No. 39, Transmittal 679, Supertrunking Video Service and Multichannel Video Service.

46/ See, e.g., Comments of Commercial Internet Exchange Association at 10-11; Comments of CompuServe/Prodigy at 8-9; Comments of Internet User Coalition at 8; Comments of WorldCom at 22.

47/ See e.g., Comments of GTE at 32-33; Comments of Pacific Telesis at 21-24; Comments of SNET at 9-11; Joint Comments of Bell Atlantic and NYNEX at 13-15.

This position is particularly self-serving when viewed in the context of the FCC's past rulemakings. Throughout the FCC's Local Competition proceeding, the ILECs steadfastly opposed suggestions that the Commission facilitate the use of "bill and keep" as a means of satisfying the 1996 Act's mutual compensation requirements.[48/] Instead, the ILECs sought to ensure that carriers would actually compensate one another for the termination of traffic on their respective networks.[49/] Now, having realized that they will not necessarily be the beneficiaries of these arrangements in every instance, the ILECs complain that it is somehow "unfair" for CLECs to be compensated for terminating traffic. In effect, what the ILECs seek to do is eliminate the incentive for CLECs to offer services to ISPs, thereby forcing ISPs to rely solely upon the ILECs' end-to-end networks. Such a result is directly at odds with the fundamental goals of the 1996 Act and should be soundly rejected.

C. The Record Supports the FCC's Current Regulatory Policies Regarding Treatment of Enhanced Services

As set forth by many commenters, the Commission should preserve its current regulatory distinction between basic and enhanced services and refrain from distinguishing between types of enhanced services providers.[50/] The basic/enhanced distinction has encouraged the growth of new services and technologies by allowing enhanced services to flourish free from regulation, and has proved workable even as technology has advanced. It should continue. Consequently, the Commission should reject efforts to alter this framework, including efforts to treat enhanced

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48/ In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order, 11 FCC Rcd 15499, 16047, 16050-51 (1996) (noting ILEC objections to "bill and keep").

49/ See id.

50/ See, e.g., Comments of GSA/DOD at 5-7, 17; Comments of AT&T at 34, n.66; Comments of WorldCom at 17.

services such as protocol conversion as basic services.[51/] Not only would such a drastic regulatory shift create significant legal and administrative burdens, it could weaken policies aimed at ensuring that non-carrier affiliated ISPs have non-discriminatory access to the same basic transmission functionalities used by the ILECs in connection with the provision of their enhanced services offerings.

The Commission also should reject suggestions to treat Internet telephony as a regulated function.[52/] Contrary to the claims of those who advocate including Internet telephony as a basic regulated service,[53/] Internet telephony is neither substitutable for, nor equivalent to, traditional interexchange voice services.[54/] As the FCC staff recently noted, there are significant technical distinctions between Internet telephony and basic interexchange voice services, as well as considerable differences with respect to quality and ease of use.[55/] Indeed, imposing regulation on Internet telephony while it is still in its infancy threatens to forestall its development altogether and hamper the development of other Internet services offerings that incorporate voice communications.[56/]

51/ See, e.g., Comments of BellSouth at 4-7.

52/ See, e.g., Comments of Internet User Coalition at 17; Comments of WorldCom at 17-18.

53/ See, e.g., Comments of ACTA at 8-10; Comments of TCA at 5; Comments of USTA at 15-20.

54/ See Comments of Internet Access Coalition at 60-61.

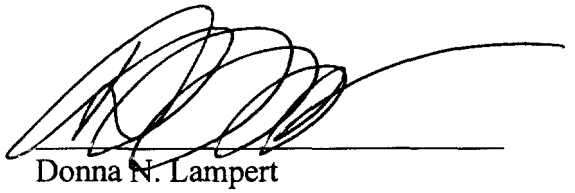
55/ See Digital Tornado at 39.

56/ See id. at 40. Such regulation could also require the Commission to force network providers to develop means of distinguishing between voice and data packets, imposing additional, and perhaps insurmountable, technical burdens and unnecessary costs on network providers. See Comments of Internet User Coalition at 17; Digital Tornado at 40.

CONCLUSION

For the foregoing reasons, the Commission should rely upon competition as the principal mechanism for stimulating new investment and innovation in data network architectures. Robust facilities-based local competition will spur both CLECs and ILECs to invest in the fastest and most reliable data network architectures available, while the already vigorous competition between ISPs will spur competitors in the Internet services market to utilize the most efficient and economical data transmission technologies and functionalities. The Commission should reject suggestions to impose its outdated access charge regime on ISPs, and refrain from changing regulatory policies which have been promoting local competition and stimulating the growth of the Internet services business.

Respectfully submitted,



George Vradenburg, III
Senior Vice President and General Counsel
William W. Burrington
Director, Law and Public Policy
and Assistant General Counsel
Jill Lesser
Deputy Director, Law and Public Policy
and Senior Counsel
AMERICA ONLINE, INC.
1101 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036
(202) 530-7878

Donna N. Lampert
Christopher J. Harvie
Yaron Dori
MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY AND POPEO, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
(202) 434-7300

Counsel for America Online, Inc.

Dated: April 23, 1997

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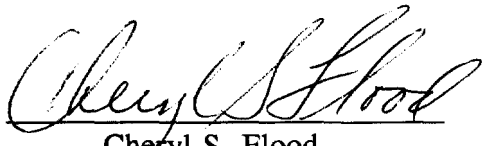
CERTIFICATE OF SERVICE

I, Cheryl S. Flood, hereby certify that on this 23rd day of April, 1997, I caused copies of the foregoing "REPLY COMMENTS OF AMERICA ONLINE, INC." to be sent first-class mail, postage prepaid, or to be delivered by messenger (*) to the following:



Cheryl S. Flood

*Chairman Reed E. Hundt
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, D.C. 20554

*Regina Keeney
Chief
Common Carrier Bureau
Federal Communications Commission
Room 500
1919 M Street N.W.
Washington, D.C. 20554

*Commissioner James H. Quello
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, D.C. 20554

*James D. Schlichting
Chief
Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
Room 518
1919 M Street, N.W.
Washington, D.C. 20554

*Commissioner Rachelle B. Chong
Federal Communications Commission
Room 844
1919 M Street, N.W.
Washington, D.C. 20554

*Robert M. Pepper
Chief
Office of Plans and Policy
Federal Communications Commission
Room 822
1919 M Street, N.W.
Washington, D.C. 20554

*Commissioner Susan Ness
Federal Communications Commission
Room 832
1919 M Street, N.W.
Washington, D.C. 20554

*Thomas Power
Chief, Legal Division
Competitive Pricing Division
Federal Communications Commission
1919 M Street, N.W.
Room 518
Washington, D.C. 20554

*Kathleen B. Levitz
Deputy Bureau Chief, Policy
Common Carrier Bureau
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, D.C. 20554

*Blair Levin
Chief of Staff
Office of Chairman Hundt
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, D.C. 20554

*Jane Jackson
Deputy Chief
Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
Room 518
1919 M Street, N.W.
Washington, D.C. 20554

*Kevin Werbach
Counsel for New Technology
Office of Plans and Policy
Federal Communications Commission
Room 822
1919 M Street, N.W.
Washington, D.C. 20554

*A. Richard Metzger, Jr.
Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, D.C. 20554

*Elliott Maxwell
Office of Plans and Policy
Federal Communications Commission
Room 822
1919 M Street, N.W.
Washington, D.C. 20554

*Richard Welch
Chief
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
Room 544
1919 M Street, N.W.
Washington, D.C. 20554

*Michael R. Nelson
Office of Plans and Policy
Federal Communications Commission
Room 822
1919 M Street, N.W.
Washington, D.C. 20554

*Pat Degraba
Chief Economist
Common Carrier Bureau
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, D.C. 20554

*Daniel Gonzalez
Legal Advisor
Office of Commissioner Chong
Federal Communications Commission
Room 844
1919 M Street, N.W.
Washington, D.C. 20554

*Laurence D. Atlas
Associate Bureau Chief
Common Carrier Bureau
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, D.C. 20554

*James Casserly
Senior Legal Advisor
Office of Commissioner Ness
Federal Communications Commission
Room 832
1919 M Street, N.W.
Washington, D.C. 20554

*Kathy Franco
Legal Counsel
Common Carrier Bureau
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, D.C. 20554

*James R. Coltharp
Special Counsel
Office of Commissioner Quello
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, D.C. 20554

*Thomas A. Boasberg
Senior Legal Advisor
Office of Chairman Hundt
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, D.C. 20554

*International Transcription Service
Federal Communications Commission
2100 M Street, N.W.
Room 140
Washington, D.C. 20037

Charles H. Helein
General Counsel
Helein & Associates, P. C.
8180 Greensboro Drive
Suite 700
McLean, VA 22102

Lawrence W. Katz
Edward D. Young, III
Betsy L. Anderson
Bell Atlantic/NYNEX
1320 North Court House Road
8th Floor
Arlington, VA 22201

David P. McClure
Association of Online Professionals
6096 Franconia Road
Suite D
Alexandria, VA 22310

Ronald L. Plesser
Mark J. O'Connor
Piper & Marbury, L.L.P.
1200 19th Street, N.W.
Seventh Floor
Washington, D.C. 20036

Mark C. Rosenblum
Ava B. Kleinman
AT&T Corporation
Room 3252J1
295 North Maple Avenue
Basking Ridge, NJ 07920

Randolph J. May
Sutherland, Asbill & Brennan
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2404

M. Robert Sutherland
Richard M. Sbaratta
BellSouth Corporation
Suite 1700
1155 Peachtree Street, N.E.
Atlanta, GA 30309-3610

R. Micahl Senkowski
R. Paul Margie
Wiley, Rein & Fielding
1775 K Street, N.W.
Washington, D.C. 20006

Jody B. Burton
Personal Property Division
General Services Administration
18th & F Street, N.W.
Room 4002
Washington, D.C. 20405

Bradley Stillman
Don Sussman
Alan Buzacott
MCI Communications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Jonathan Jacob Nadler
Squire, Sanders & Dempsey, L.L.P.
1201 Pennsylvania Avenue, N.W.
Box 407
Washington, D.C. 20044

Joseph S. Paykel
Andrew B. Schwartzman
Gigi B. Sohn
Media Access Project
1707 L Street, N.W.
Suite 400
Washington, D.C. 20036

Colleen Boothby
Levin, Blaszak, Block & Boothby
1300 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 20036-1703

Mary E. Booner
Motorola, Inc.
1350 I Street, N.W.
Suite 400
Washington, D.C. 20005

Glenn B. Manishin
Christine A. Mailloux
Blumenfield & Cohen-
Technology Law Group
1615 M Street, N.W.
Suite 700
Washington, D.C. 20036

Jay Bennett
Pacific Telesis Group-Washington
1285 Pennsylvaia Avenue, N.W.
Suite 400
Washington, D.C. 20004

Diane Iglesias
Southern New England Telephone
227 Church Street
New Haven, CT 06510

Jeffrey L. Sheldon
Thomas E. Good
UTC
1140 Connecticut Avenue, N.W.
Suite 1140
Washington, D.C. 20036

Mary McDermott
Linda Kent
Keith Townsend
Hance Haney
United States Telephone Association
1401 H Street, N.W.
Suite 600
Washington, D.C. 20005

David L. Porter
Catherine R. Sloan
Richard L. Fruchterman
Richard S. Whitt
WORLDCOM, Inc.
1120 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036

Robert B. McKenna
US WEST, Inc.
1020 19th Street, N.W.
Suite 700
Washington, D.C. 20036

Ramsey L. Woodworth
Robert M. Gurss
Rudolph J. Geist
Wilkes, Artis, Hedrick, & Lane
1666 K Street, N.W.
Suite 1100
Washington, D.C. 20006

Teresa Marrero
Teleport Communications Group, Inc.
Two Teleport Drive
Staten Island, NY 10311

Randall R. Zach
TCA, Inc.
3617 Betsy Drive
Suite I
Colorado Springs, CO 80917

F1/64743.1